

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 249L.4(4), the Department of Human Services proposes to amend Chapter 36, “Facility Assessments,” Iowa Administrative Code.

The proposed amendments:

- Change the conditions affecting the amount of the quality assurance assessment fee to comply with federal provider tax waiver regulations.
- Clarify when the assessment level will be determined.
- Clarify that inadvertence or oversight does not constitute good cause for failure to pay the nursing facility quality assurance assessment timely.
- Update legal references.

Currently, three categories of facilities are assessed a fee of \$1 per non-Medicare patient day, while the rest are assessed \$5.26 per non-Medicare patient day. The amendments change the criteria for one of these categories, shifting facilities that have 47 to 50 certified beds from currently paying the \$1 fee to paying the \$5.26 fee. Changing the certified-bed criteria will allow the state to continue the nursing facility provider tax program.

The number of licensed beds on file with the Department of Inspections and Appeals as of May 1 of each year shall be used to determine the assessment level effective July 1 of each year. The amendments provide that the assessment level for each nursing facility shall be determined on an annual basis and shall be effective for the period July 1 through June 30.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because waivers would make the application of the assessment fee inequitable to facilities. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 249L and 249M.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 36, Division II**, preamble, as follows:

#### PREAMBLE

These rules describe the nursing facility quality assurance assessment authorized by ~~2009~~ Iowa Code Supplement chapter 249L. The rules explain how the assessment is determined and paid.

ITEM 2. Amend subrule 36.6(2) as follows:

**36.6(2) Assessment level.** The assessment level for each nursing facility shall be determined on an annual basis and shall be effective for the period July 1 through June 30.

a. Nursing facilities with ~~50~~ 46 or fewer licensed beds are required to pay a quality assurance assessment of \$1 per non-Medicare patient day. The number of licensed beds on file with the department of inspections and appeals as of May 1 of each year shall be used to determine the assessment level effective July 1 of each year.

b. Nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the Iowa department of commerce, as of May 1 of each year, are required to pay a quality assurance assessment of \$1 per non-Medicare patient day.

c. Nursing facilities with annual Iowa Medicaid patient days of 26,500 or more are required to pay a quality assurance assessment of \$1 per non-Medicare patient day. The annual number of Iowa Medicaid patient days will be determined as of May 1 of each year using the most current cost report submitted to Iowa Medicaid enterprise as of May 1 of each year.

d. All other nursing facilities are required to pay a quality assurance assessment of \$5.26 per non-Medicare patient day.

ITEM 3. Amend subrule 36.7(4) as follows:

**36.7(4)** A nursing facility that fails to pay the quality assurance assessment within the time frame specified above shall pay a penalty in the amount of 1.5 percent of the quality assurance assessment amount owed for each month or portion of a month that the payment is overdue.

a. If the department determines that facility substantiates good cause is shown beyond the facility's control for failure to comply with payment of the quality assurance assessment, the department shall waive the penalty or a portion of the penalty. For purposes of this subrule, "good cause" shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

b. Requests for a good cause waiver must be submitted to the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, 100 Army Post Road, Des Moines, Iowa 50315, within 30 days of notice to the facility that the penalty is due.

ITEM 4. Amend **441—Chapter 36, Division II**, implementation sentence, as follows:

These rules are intended to implement 2009 Iowa Code Supplement chapter 249L.

ITEM 5. Amend **441—Chapter 36, Division III**, preamble, as follows:

PREAMBLE

These rules describe the hospital health care access assessment authorized by ~~2010 Iowa Acts, Senate File 2388, enacted by the Eighty-third General Assembly~~ Code chapter 249M. The rules explain how the assessment is determined and paid.

ITEM 6. Strike the parenthetical implementation "(83GA,SF2388)" in rules **441—36.10(83GA,SF2388)** to **441—36.12(83GA,SF2388)** and insert "(249M)" in lieu thereof.

ITEM 7. Amend **441—Chapter 36, Division III**, implementation sentence, as follows:

These rules are intended to implement 2010 Iowa Acts, ~~Senate File 2388~~ Code chapter 249M.